

Concerning Request for Reprints for Army Medical Library.

(COPY)

WAR DEPARTMENT
ARMY MEDICAL LIBRARY
WASHINGTON, D. C.

October 22, 1940.

Sir:—I am directed by the Surgeon-General to inform you that authors' reprints are gratefully received at the Army Medical Library. They are placed in a special collection catalogued by author and thus form a ready bibliography of the work of any given writer and a valuable supplementary source of material when the volume of original publication is temporarily unavailable at the bindery or on loan.

Editorial notice of this collection would be much appreciated.

Very respectfully,

HAROLD W. JONES,
Colonel, Medical Corps, United States Army,
Librarian

Concerning Vacancies in Governmental Medical Agencies.

(COPY)

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D. C.

*Applications Closed for Temporary and Part-Time
Civilian Medical Officers for Army—Doctors
Needed for Other Medical Positions*

The Civil Service Commission announces that enough applications have been received to meet the prospective need for temporary and part-time civilian medical officers in connection with the Army expansion.

The Commission calls attention to the fact, however, that there is an urgent need for medical officers and senior and associate medical officers to fill permanent positions in other agencies. Applications will be received until further notice. The positions pay from \$3,200 to \$4,600 a year. Fourteen specialized branches of medicine are included.

There is also an urgent need to fill junior medical officer positions at \$2,000 a year at St. Elizabeth's Hospital, Washington, D. C.

Full information and application forms for these examinations may be obtained at the office of the Secretary, Board of United States Civil Service Examiners at any first- or second-class post office, or from the United States Civil Service Commission, Washington, D. C., or from any of the Commission's district offices.

October 8, 1940.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

To What Extent May a Physician or Surgeon Make Assurances to His Patient?

The fact that good psychology often encourages and may necessitate statements by the physician that "everything will be all right," "no harm will result from this," etc., often places the physician in an embarrassing position

in reference to legal liability should the treatment not turn out successfully.

Although it seems unfair and unwise for the law to interfere with the physician's judgment in making such assurances, there is a California case which holds that a physician may be held liable for breach of warranty where such assurances have been made to the patient. Under the theory of the case, if assurances are unfulfilled, liability exists even though due care and reasonable skill was used. The case under discussion is *Crawford vs. Duncan*, 61 Cal. App. 647. There a woman, fond of social contacts, consulted a physician with reference to swollen glands on the right side of her neck. The physician stated that surgery could relieve the condition, but that a scar would result. The physician, in view of the patient's desire to keep her neck free from disfigurement, suggested that she have the glands treated by radium and sent her to the defendant, a radiologist.

The defendant, according to the evidence, told plaintiff that radium treatments had been very successful in treating small swellings in glands of that description without leaving a scar of any kind and assured plaintiff that there would be no permanent scar in her case. The defendant explained that radium was generally used so that there would be no scars and, in fact, was used to eliminate scars, birthmarks, etc.

Throughout the treatment defendant frequently assured the plaintiff that any disfigurement which might result from his use of the radium would disappear with the lapse of time. At the end of the treatment there was a running sore on plaintiff's neck, but defendant told her that if she would give it time the neck would become normal.

Approximately three years after the treatment, plaintiff brought suit for breach of warranty, stating that where the running sore had healed a permanent scar remained, contrary to the defendant's assurances. It was held that the plaintiff had a right to proceed to trial on the breach of warranty theory without regard to the presence or lack of negligence, and that the Statute of Limitation would run against the plaintiff only from that time when a reasonable person could know with a reasonable degree of certainty that a permanent scar had developed as a result of the treatments.

The possible extensions of the rule of this case are alarming. May a physician whose patient has a nervous temperament resort to assurances of no harm and successful result, in order to convince the patient that he should permit performance of an act necessary from the standpoint of good medical practice? If he does, the patient might bring suit years afterward if a condition later arises which could be attributed to the treatment. In such a situation, recovery could be had for the breach of warranty, even though the treatment was in conformity with the rules of good medical practice, was carefully and skillfully done, and was for the patient's best interests.

It is the opinion of the author that the rule of the *Crawford* case is not only harsh and inconsistent with the general principles which render a physician vulnerable only in case he is guilty of malpractice, but also very detrimental to the policy of allowing a physician to use some discretion as to how to accomplish an act which is clearly for the patient's benefit. However, until some statute is enacted requiring all suits against physicians or surgeons resulting from injuries from treatment to be based on malpractice or requiring warranties by a physician to be in writing, there is danger that the *Crawford* decision may, on the basis of *stare decisis* (established precedent), stand as the law of California.

Until the law of California is changed either by statute or by a decision overruling the *Crawford* case, physicians should be exceedingly careful of the assurances which they make to patients.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.